

projects. Upon receipt and review of the local unit of government's proposed fund use, the State shall authorize the local unit of government to obligate local subgrant funds. The State shall electronically submit a copy of the local subgrant information to OJJDP, as provided in the award package, within 30 days of the date that the local unit of government is authorized to obligate program funds under its subgrant award.

## **PART 32—PUBLIC SAFETY OFFICERS' DEATH AND DISABILITY BENEFITS**

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**AUTHORITY:** Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3711 *et seq.*).

**SOURCE:** 57 FR 24913, June 11, 1992, unless otherwise noted.

### **Subpart A—Death and Disability Benefits**

#### **§ 32.1 Purpose and OMB control number.**

(a) The purpose of this subpart is to implement the Public Safety Officers' Benefits Act of 1976, as amended, which authorizes the Bureau of Justice Assistance, Office of Justice Programs, to pay a benefit of \$100,000, adjusted in accordance with § 32.3(b), to specified survivors or public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty, and to claimant public safety officers found to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty. The Act also authorizes funds to establish national programs to assist the families of public safety officers who have died in the line of duty. (The Act is subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3711 *et seq.*)

(b) The information collection requirements in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 1121–0166.

[57 FR 24913, June 11, 1992, as amended at 62 FR 37715, July 15, 1997]

#### **§ 32.2 Definitions.**

For purposes of this subpart—

(a) *The Act* means the Public Safety Officers' Benefits Act of 1976, 42 U.S.C.

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3796, *et seq.*, Public Law 94-430, 90 Stat. 1346 (September 29, 1976), as amended.

(b)(1) *Bureau* or *BJA* means the Bureau of Justice Assistance of the Office of Justice Programs;

(2) *PSOB* means the Public Safety Officers' Benefits Program of the Bureau of Justice Assistance.

(c) *Line of duty* means:

(1) Any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires; and

(2) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

(d) *Direct and proximate*, *direct*, or *proximate* means that the antecedent event is a substantial factor in the result.

(e) *Personal injury* or *injury* means any traumatic injury, as well as diseases which are caused by or result from such an injury, but not occupational diseases.

(f) *Catastrophic injury* means consequences of an injury that permanently prevent an individual from performing any gainful work.

(g) *Traumatic injury* means a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(h) *Permanent and total disability* means medically determinable consequences of a catastrophic, line-of-duty injury that permanently prevent

a former public safety officer from performing any gainful work.

(i) *Occupational disease* means a disease which routinely constitutes a special hazard in, or is commonly regarded as a concomitant of the officer's occupation.

(j) *Public safety officer* means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, rescue squad member or ambulance crew member.

(k) *Public agency* means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing.

(l) *Public employee* means an employee of a public agency.

(m) *Law enforcement officer* means any individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal law, including but not limited to police, corrections, probation, parole, and judicial officers.

(n) *Firefighter* includes any individual serving as an officially-recognized or designated member of a legally-organized volunteer fire department.

(o) *Rescue squad or ambulance crew member* means an officially recognized or designated employee or member of a rescue squad or ambulance crew.

(p) *Prerequisite disability certification* means:

(1)(i) The employing agency's official, certified award to the claimant public safety officer of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty; or

(ii) If the employing agency does not itself make such disability awards, then an official, certified award to the claimant public safety officer by the

cognizant judicial, political or administrative agency or body of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty.

(2) Nothing in this paragraph (p) shall be construed to affect State, municipal, or local laws, regulations, policies, or agencies, which have been or will be established for the purpose of granting public safety officer disability pensions, including heart and lung laws and similar benefits, nor is any standard for the granting of such benefits implied in any way by this part.

(q) *Gainful work* means work activity that is both substantial and gainful.

(1) *Substantial work activity* means work activity that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if the public safety officer does less, gets paid less, or has less responsibility than when he or she was a member of the former employing public safety agency.

(2) *Gainful work activity* means work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized or pay is received.

(r) *Residual functional capacity* means that which a former public safety officer can still do despite limitations imposed by a disability. Residual functional capacity is a medical assessment, a determination to be made by the Office's medical experts. Such medical determination will be based on examination of prerequisite disability certifications as specified in 28 CFR 32.2(p), and by examination of any additional case specific medical and other relevant documentation necessary to a medical assessment and determination of residual functional capacity.

(s) *Age* means a former public safety officer's chronological age, and the extent to which that individual's age affects his or her ability to adapt to a new work situation or to do work in competition with others. PSOB will evaluate age in the context of residual functional capacity within the following general parameters:

(1) *Youthful* means that a former public safety officer under age 50 will generally be considered able to adapt to a new work activity and environment.

(2) *Early middle age* means that a former public safety officer, between age 50 and age 59, will generally be considered to experience significant difficulty in adapting to a new work activity and environment.

(3) *Middle and advanced age* means that a former public safety officer age 60 or over will generally be considered to experience substantial difficulty in adapting to a new work activity or environment.

(t) *Education* means primarily the level and content of a former public safety officer's formal schooling, including vocational training. Education also includes completion of in-service training seminars and educational programs while a member of the former employing public safety agency or while formerly employed.

(u) *Work experience* means the skills and abilities acquired by the former public safety officer before, during and following service in the former public safety agency, suitable to use in adapting to a new work activity and environment.

(v) *Child* means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student, as defined in section 8101 of title 5, United States Code; or

(3) Over eighteen years of age and incapable of self-support because of physical or mental disability.

(w) *Stepchild* means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in §32.13(b), with the officer at the time of the officer's death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(x) *Student* means:

(1) An individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a

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full-time course of study or training at an institution which is:

(i) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(ii) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(iii) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited; or

(iv) An additional type of educational or training institution as defined by the Secretary of Labor.

(2) An individual is deemed to be a student during an interim between school years if the interim is not more than 4 months and if the student shows to the satisfaction of the Bureau, that the student intends to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Bureau, the student is prevented by factors beyond the student's control from pursuing the student's education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(y) *Spouse* means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(z) *Dependent* means any individual who was substantially reliant for support upon the income of the deceased public safety officer.

(aa) *Intoxication* means a disturbance of mental or physical faculties:

(1) Resulting from the introduction of alcohol into the body as evidenced by—

(i) A blood alcohol level of .20 per centum or greater; or

(ii) A blood alcohol level of at least .10 per centum unless the Bureau re-

ceives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to the officer's death or catastrophic personal injury which resulted in permanent and total disability; or

(2) Resulting from drugs or other substances in the body.

(bb) *Rescue* means the provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing, or in imminent danger of bodily harm.

(cc) *Support* means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

[57 FR 24913, June 11, 1992, as amended at 61 FR 33657, June 28, 1996; 62 FR 37715, July 15, 1997]

### OFFICERS COVERED

#### § 32.3 Coverage.

(a) When the Bureau determines under this part, that a public safety officer, as defined in § 32.2(h) has died or become permanently and totally disabled as the direct and proximate result of an injury sustained in the line of duty, the Bureau shall pay a benefit of \$100,000, adjusted in accordance with § 32.3 (b) or (c), subject to the conditions set forth in § 32.6. Payment of death benefits shall be made in the order specified in § 32.10.

(b) For the death benefit program, on October 1 of each fiscal year after October 15, 1988, the Bureau shall adjust the level of the death benefit payable immediately before such October 1 under paragraph (a) of this section, to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on June 1 immediately preceding such October 1.

(c) For the disability benefit program, the annual cost of living adjustment shall be made in accordance with the effective date of the enactment of this program, viz. November 29, 1990.